



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 1, 1996

Mr. David M. Berman
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR96-0470

Dear Mr. Berman:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38748.

The City of Balch Springs (the "city") received a request for "all Balch Springs Police Department Codes of Conduct and/or police manuals in effect in 1995." You submitted to this office the city's Administrative Directives Manual, which includes a code of conduct. You contend that chapters 5, 6, 7, 9, 10, 11, 12, 13, and 14 of the manual are excepted from disclosure in their entirety and that portions of chapter 8 are also excepted from disclosure, under section 552.108 of the Government Code.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). The exception is designed to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture, *see* Open Records Decision Nos. 133 (1976), 127 (1976), and to protect the safety of police officers.

Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). A brief review of the submitted chapters indicates that there are many portions of the manual that clearly would not come under the protection of section 552.108. As an

example, section 7.02.001 provides the following information: "Personnel assigned to the Records Section are directly supervised by the Support Services Manager." Sections outlining the general purpose of each division and giving general requirements such as requiring investigators to present neat appearances and mandating that a personnel officer be knowledgeable in personnel matters, do not come under the protection of section 552.108.

Because it appeared, upon initially receiving the manual sections at issue, that portions were clearly public, this office notified you that you should label the *specific* portions that you considered to be protected from disclosure. *See* Gov't Code 552.301(b)(4) (governmental body seeking attorney general decision must "label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy."). We also notified you that failure to specifically mark the submitted documents would result in a waiver of your section 552.108 argument. *See* Gov't Code § 552.303(c), (d).

Your letter of February 28, 1996, to this office states:

I have not marked portions of the protected chapters to indicate that specific sections or phrases are public; our position is that any reasonably sophisticated person would be able to review a redacted copy and fill in the blanks.

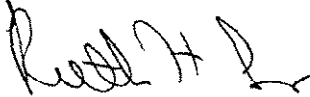
We disagree. Under chapter 552, all information held by governmental bodies is open unless the information falls within a specific exception to disclosure. Chapter 552 places upon the governmental body the burden of showing that specific records or portions of those records are excepted from public disclosure. If a governmental body fails to claim an exception or to explain how that exception applies, the exception is ordinarily waived. Gov't Code § 552.301; *see also* Attorney General Opinion JM-672 (1987); Open Records Decision No. 150 (1977) at 2 (general claim that exception applies to entire record when not clearly applicable not sufficient to show applicability of exception to disclosure).

We conclude that you have not met your burden in establishing the extent to which section 552.108 applies to the information at issue. The information is therefore presumed to be public information and must be released to the requestor in its entirety unless you can demonstrate compelling reasons for withholding specific portions of the manual.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 38748

Enclosures: Submitted documents

cc: Mr. W. Reid Wittliff
Carrington, Coleman, Sloman & Blumenthal
200 Crescent Court, Suite 1500
Dallas, Texas 75201
(w/o enclosures)